

Towards an Empathic Human Rights: Applications and Evaluations in Re-Asserting the Human

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Introduction: Human Rights as a Signpost in Turbulent Times

Finding ourselves within an increasingly confusing, chaotic world, we are faced with these questions: “how to make sense of the senseless? And how to craft a world which recognizes and protects the inherent dignity and value of human life?” Understood as a tool reflective of the values of its user, human rights language and frameworks can be used in this project.

The value of human rights, like any tool, is in its application as well as the motivation in its use. Human rights remain a relevant tool in crafting an increasingly just, dignified world, motivated by empathy. This paper suggests points of departure for this venture, founded in consistent empathic reevaluation and action. These include: a shift away from legalist emphases and interpretations; the need to challenge state primacy in human rights protections and promotions; the need to reconsider the epistemologies and teleologies of our existing state and supranational institutions by historicizing them; and a demand to reexamine our understanding and application of property rights. Applications and understandings of human rights must recognize and value its complementarity with other ideas and frameworks, such as antiracism, anti-imperialism, or the fight against growing inequity. Cooperation with other frameworks requires an understanding of human rights as complementary or supplementary, rather than supercessionary. Lastly, empathic uses of human rights demand a re-centering of the *human* in human rights practice, in terms of benchmarking, funding and evaluation.

Human Rights, Empathic Equality and Dynamism

In considering the relationship between human rights and equality, we must first conceive of human rights as a tool. Like any other technology, human rights exist in our heads, not our hands; it is not a neutral concept but rather a device that—in its conception and uses—mirrors the values of the user.¹ A political project aiming to imagine, realize, and refine a more just and equal world requires intellectual honesty, while continuing to prioritize efficacy. It should be recognized that human rights are not the sole instrument of progress, and as Samuel Moyn claims, alternative schemes could be superior.² Viewing human rights as a tool rather than a dogma allows for complementarity with other frameworks, as opposed to competition. Therefore, the relationship of human rights to equality is dynamic and changing, according to whomever wields it.

To further foster the gains and potential of a pragmatic human rights proj-

ect, intellectual flexibility, criticism, and dynamism are needed, particularly in our present age of urgency marked by the global rise of reactionary populism.³ Meaningful resistance requires a movement rooted in intellectual humility, empathy, and reflexivity.⁴ Chief among these tenets is empathy, recognized by historian Lynn Hunt as an *idea* and *practice* with both “physical as well as emotional dimensions.” Moreover, Hunt highlights empathy as a key component to the equitable realization of human rights.⁵

Accordingly, “[e]mpathy depends on the recognition that others feel and think as we do, that our inner feelings are alike in some fundamental fashion.” For Hunt this is wrapped in autonomy: to empathize is to recognize in others an equal capacity for emotional and cognitive selfhood.⁶ Hunt is largely correct, though to be considered empathic, practice ought to be genuine rather than applied towards financial, personal, or any interest beyond intrinsic decency and consideration for others and their well-being. Moreover, if humans are autonomous and thus capable of creating alternative or new existences for themselves and their communities, empathy and the crafting of empathic institutions requires vigorous and consistent action.

This necessitates that human rights communities—those committed to, guided by, or employing a human rights-centred ethic or framework—work to avert stasis. Stasis may be prevented through the application of a dynamism inherent in the ethic of “negation and transformation,” or the continued reexamination and recreation of our norms, which, as Hunt notes, is intrinsic to the “human rights revolution” itself.⁷ This consistent reevaluation is ontologically, teleologically, and epistemologically vital in order to problematize and remedy dislocations between human rights and equality.

Human rights may be losing currency in many communities because those working in professionalized or institutionalized human rights contexts often emphasize legal frameworks, while ignoring structural inequities that facilitate violations.⁸ Human rights has been under-utilized outside of law, partially due to being too rigidly applied in the legal realm; this creates a perception of human rights as strictly a legal tool. The situation demands that human rights communities reflexively shift from insularity towards both introspection and an expansion of concern related to the engines of injustice. It should also be understood that, similar to Amartya Sen’s conceptualization of justice, the search for equality is driven less by theoretical appeal than by a perception of a bankruptcy of, or an affront to, something intrinsic; expressing itself as a *sense* or *feeling* of inequality.⁹ In this way, (in)equality is ever-changing. Sen’s *capabilities approach* extends to the realm of equality as both opportunity and the process of choice are person-dependent, while reflected in the lived experiences resulting from structural exclusion.¹⁰ The shifting, dynamic, and perceptual nature of equality means that it must have a basis in (pragmatic) empathic extensions.¹¹ Accordingly, it is time to reconsider the ways in which state power has been shaped by the colonial experience. States are the primary protector

(and often violator) of rights, and are also capable of misusing at best, coopting at worst, the language of human rights. A similar analysis is needed for human rights mechanisms. Moreover, current ascriptions of human rights responsibilities must be reconsidered, along with the origins and uses of property rights and its engagement with equality.

The Contemporary Character of Human Rights and the Judiciary

It is vital to understand why some human rights institutions and experts emphasize legal frameworks, at the peril of neglecting structural inequity.¹² Disproportionate institutional ties between human rights and legality are a function of the typology of both concepts. Both are conservative in their contemporary forms, insofar as they seek to *reform* rather than *transform* existing structures. In law this is reflected by the assertion that “in a changing society law should march in tune with the changed ideas and ideologies,” perhaps best evinced in criminal law wherein “[m]ethods of providing remedies have undergone tremendous change with the growth of electronic commerce, cyber crime and internet.”¹³ The tempo of law is marked by evolution as opposed to revolution; changes are made to *reflect* rather than *lead* change, and in liberal democracies this is the appropriate function of the judiciary. Samuel Moyn makes the compelling argument that contemporary human rights culture was birthed in the 1970s out of disillusionment with utopian projects such as the welfare state, and the failures of postcolonial politics.¹⁴ This reformative conception of human rights was expressed in the *Universal Declaration of Human Rights*, as well as the Carter administration’s use of human rights in foreign policy.¹⁵ Mainstream human rights has been widely used to reform power for good, but is perhaps lacking as a challenge to the existence or legitimacy of power, especially the primacy of state power.

Historicizing the Human Through a Racial Lens

The object of human rights protections—the human—must be reevaluated prior to assessing its relationship to the state. With very few formal colonies remaining, the present offers an excellent opportunity to develop an honest universal vision of human rights.¹⁶ While the *International Convention on the Elimination of All Forms of Racial Discrimination* aptly states “any doctrine of superiority based on racial differentiation is scientifically false,” this only goes part of the way in the twenty-first century.¹⁷ While this treaty states that race as a category has been disproven, it does not recognize that race as a manufactured difference was mandated by the colonial project; in this sense it does not historicize race.¹⁸ While the international community has acknowledged the falsity of racial logic underpinning white supremacy, it remains incumbent to address the moral damage resulting from colonialism; this re-making of humanity is both necessary for the beneficiaries of oppression as well as the marginalized.¹⁹ The restoration of what Paul Gilroy frames as “infrahumans”—those previously deemed disposable—is in a Hegelian sense²⁰ a project of

great urgency to the valuation of all lives; until the humanity of the most marginalized is fully acknowledged and restored, the inherent dignity of all lives cannot fully be recognized.²¹ Collective ownership of wrongdoing and correction is part of working towards meaningful equality and prosperity. Historicizing injustice is necessary to build the empathic connections Jeremy Rifkin claims are required for equality and indeed, the realization of human rights for all.²² In order to transform our institutions towards equality they must first reflect an identification with the struggles of others (especially the marginalized) thus understanding the makings and continuations of systemic exclusion is vital. A lack of empathy is accompanied by totalitarian tendencies; institutions reflect a community's values, and thus inclusion must be prioritized.²³

Human rights should seek reinforcement and complementarity with other frameworks—chiefly antiracism. Gilroy correctly asserts that antiracists “are certain of what we are against but cannot say what we are *for* with the same degree of clarity and conviction,” while current efforts lack the possibility to envision race’s “un-making, its deconstruction, its transcendence, or even the possibility to imagine its eventual descent into irrelevance.”²⁴ To this extent, human rights and its existing legal frameworks can play an aspirational role. It is important to recognize the continued power of race in the contemporary era without a resignation to its ontology. The challenge is to both acknowledge the existence of a contemporary structural issue while crafting a world beyond it.

Aspirational components of supranational human rights documents serve to recognize current problems and outlaw violations (as treaties do), while envisioning a new world. However, such documents must acknowledge and correctly frame the ascendance of systemic violations, in order to meaningfully challenge the basis for violations (in this case racial discrimination). Instilling antiracist scholarship, specifically that surrounding the historical construction and experience of oppression, into such documents will meaningfully and ambitiously challenge the very ontology and permanence of race. Conversely, omitting this component reifies and stabilizes race as a category and unit of analysis as well as a unit of social organization. Recognizing the manufactured nature of difference implicitly imagines a world wherein that difference (and thus the justification for violation) can be un-made. Moreover, such efforts would further increase perceptions of human rights as an engine of justice, fighting views shaped by the misuse of human rights language by violators.

The inception of human rights must be historically problematized, particularly one narrative of the concept/community/theme arising out of a consensus resulting from the horrors of the Second World War.²⁵ If one conceives of that war as colonialism returning home—as both Fanon and Césaire did—the implication is that the horrors of colonialism in Europe warranted the birth of a new idea and instrument (in this narrative human rights is inextricably linked to the United Nations) while suffering elsewhere was of little concern.²⁶ The implications of this

are threefold: the humans whose rights and dignity are *worth* protecting are very specific; the *Universal Declaration of Human Rights* may not be that universal, as it did not include the voices of the colonized; and the self-determination conceived of at the time was *by* and *for* colonial powers (or at least independent countries), thus relegating human rights to a “consolation prize” of sorts—a governance structure for the subjected perhaps not that different from laws governing the treatment of slaves.²⁷ Additionally, a possible relationship between the rise of the UDHR out of the butchery of the Second World War, an elevation of “anti-Semitism [as] the master narrative for an understanding of racial politics” and the *probationary* whiteness or European-ness attained by American Jews and the Israeli state in the postwar period may be fertile ground for future scholarly inquiry, though it does not fit the purview of this piece.²⁸

An empathic reevaluation and action of redress regarding the history of the UDHR requires “reworking material from the past while facing the present.”²⁹ In this vein, the *Declaration* ought to recognize and rectify the exclusion of the world’s colonized population. While initiating a formal human right against colonial relations or occupation may be challenging, as the right to self-determination already falls under this general purview, the inclusion of colonialism as a crime against humanity may be more appropriate as it demands reparatory action. This is particularly important as the categorization or concept has origins in the colonial period—the phrase “crime against humanity” was first coined to describe colonial Congo. Additionally, there is an extensive history of framing liberation movements as simply “crimes[s] against humanity,” though many understood and validated violence in anticolonial struggle as a retrieval of a right to self-determination denied.³⁰ Under contemporary understandings of crimes against humanity, fascist crimes constitute an offense towards the greater human family but the crimes of colonial fascist regimes do not, while resistance to such oppression is framed as inherently detrimental not only to humanity but “progress.”³¹ The message is clear: *European lives matter, those of the colonized world do not.*

Some may resist the codification of colonialism as a crime against humanity, as colonial relations are both public in nature and systemically ingrained into the global economy, meaning that not only have social, political, and cultural rights been violated, but economic ones as well. This would require not only reparations for the past, but if “[c]olonialism is not dead,” then restructuring present economic, epistemological and political dynamics is necessary as well.³² Moreover, similar to postracial arguments domestically, colonial relations are often problematized as something solvable—as something we have (or ought to have) moved beyond and for which common folks are not responsible. Or, colonial relations are culturally embraced and justified through myriad amnesias, denialisms, and sentimentalisms.³³

Another means to address legacies of inequity and perceptions of human rights as an exclusionary concept is by seeking to reorient associated supranational institutions such as the UN—in particular the Security Council. Accepting the prem-

ise that states are representative of their populaces, such privileged positions deem specific groups more able to conceive of and lead on human rights and other issues facing the international community; this is nothing short of an institutionalization of existing unequal power relations.

Redesigning our institutions along increasingly reflexive and historically inclusionary lines constitutes a public empathic action. As empathy requires consistency, reevaluation, and dynamism to match the ever-changing nature and tempo of modern life, such actions are both *form* and *function* of an increasingly empathic society; they reflect progress while encouraging or promoting further empathic impulses and responses.³⁴

Self-Infliction amidst Changing Societies

Unfortunately, the universality and thus credibility of human rights faces attacks from within its very structures. In sustaining the French government's burqa ban, the European Court of Human Rights has only sustained notions of human rights as being Eurocentric and exclusionary.³⁵ This is an instance wherein the Court misused human rights as a tool, ruling that a concealed "face was tantamount to a barrier against others, based on the importance of the face in social interaction," thus taking a position that qualifies socialization and social interaction as universal in form.³⁶ Moreover, the Court found such concealment infringed on "the right of others to live in a space of socialization which makes living together easier."³⁷ The Court clearly privileged mainstream society's ostensible discomfort over meaningful identity practice. As formalized racial discourse is losing social currency with the collapse of colonial boundaries, stratification is shifting towards a hierarchy of absolutism organized around culture; the *colour line* is transmuting into the *cultural line*.³⁸ Accordingly, the burqa ban reflects not only the criminalization of identity, but also the superimposition of cultural and moral boundaries onto human bodies; the burqa wearer is the domestic contradiction conceived of as an internal *Clash of Civilizations*.

The terms of such conflict being foisted onto the wearer of the burqa are both gendered and inconsistent with liberalism's emphasis on individual autonomy. It is just as wrong to dictate that a woman *dress-down*, lest she bring discomfort upon others, as it is to mandate she *cover up* so as to not tempt men. This ruling reifies sexist tropes over female bodily autonomy, dictating that women ought to draw the attention of men while remaining sexually *pure*. In this case, the burqa wearer is transformed from *subject* to *object*, constituting a highly illiberal attack on individual agency and human dignity. Accordingly, the Court's decision justifiably undermines its own legitimacy as an authority on human rights.

In accepting the French government's argument of uniform social practice, cultural superiority, and divergence is emphasized, rather than points of accommodation and joint community. These distinctions are a legacy of the colonial project which should be analyzed and collapsed.³⁹ Moreover, the empowerment and protection of minorities should transcend the legal form—a reliance on legal meas-

ures serves to limit the political existence of minorities to ways overtly protected by the state.⁴⁰ While seeking to integrate minorities, societies must seek to integrate themselves as well; this requires actively constructing empathy.⁴¹ Accordingly, minorities should not simply be seen as in society, but rather should be framed as part of the social fabric. Human rights communities must work to shed conceptions of minorities that relegate them to victimhood as opposed to agency, a requirement in crafting a joint political project towards a more empathic and thus equal paradigm.

Lynn Hunt correctly identifies the role of literature in developing empathy for those previously excluded or invisible, and its relationship to the development of human rights.⁴² With this in mind, popular representation has meaningful effects as to whom is considered worthy of ostensibly universal protections. In an increasingly diversified, globalized world, the promotion of inclusive media both *reflects* and *promotes* a more empathic reality. For instance, some observers have hailed the film *Black Panther* as heralding a cinematic resistance to inequitable global affairs and an attack on white supremacy and patriarchy; the autonomy (a requirement in empathy) of people of colour is both recognized and promoted in cinema.⁴³ Whether this film is successful in promoting integration and greater empathy is up for debate, though it is clear that greater integration and respect for human rights is fueled or supported by an increasingly diversified popular culture.⁴⁴ Continued reliance on the judiciary requires an active, holistic transformation of society in which the courts will theoretically reflect at a later time. Unfortunately, progress is rarely linear, nor guaranteed.⁴⁵

Postcolonial Re-Imaginations and Legacies in the Modern State

If we accept Hannah Arendt's proposition that human rights are chiefly protected by states, then citizenship and nationality conceptually function to distinguish cultivated personhood from savagery.⁴⁶ In this vein it is vital to reconsider and examine the relationships of equality and human rights to state processes. Understanding the functions of the modern state requires recognizing the ways in which it has been shaped by modern history (especially when dealing with former colonial powers). One way to approach this is by returning to the colonial period. It is necessary to reconfigure understandings of this era—chiefly the relationship between the metropole and the colony. Often this relationship is conceived of as the metropole conquering and shaping the colony. The paternalism of this one-directional narrative was put best by former French Prime Minister François Fillon's insistence that the colonial experience was just France's way of "sharing our culture."⁴⁷ In order for human rights communities to adapt to the continuing challenges inherent in a paradigm wherein state actors are supreme, this relationship must be reconsidered.

The colony (and thus the colonized) was not some vacuous space that was acted upon without having consequences in the metropole, or without leaving imprints in our contemporary age, but rather served as a political laboratory for manufacturing difference and experimentation in the exercise of state power. Colonial

staff themselves often returned to Europe bringing back a new (or refined) set of experiences and ideas. This is of particular note in the field of policy as the colony was the proverbial ground zero for the construction (or extension) of state power and thus population management.⁴⁸ Alfred W. McCoy demonstrates how the American occupation of the Philippines shaped domestic security apparatuses, creating processes that characterize overreaches revealed by the Snowden leaks.⁴⁹ In a more immediate sense, this phenomenon is reflected in the growth of a counterinsurgency-industrial-complex resulting from the Israeli occupation of Palestinian lands—a situation Jeff Halper refers to as “Global Gaza.”⁵⁰ Accordingly, innovations in population control tactics and devices derived from the occupation are exported to security forces across the globe.⁵¹

Currently, one of the prevailing ideologies employed in the realm of foreign policy is that of neoconservatism. Elements of neoconservatism such as preemptive strikes, or the failure or lack of wherewithal to differentiate between combatants and civilians, not only violate basic conceptions of a right to life and fair trial, but reflect a desacralization of the body. Gilroy posits this as a vestige of colonial expansion, a period wherein colonial consolidation was fueled by a notion “that the natives could be made to simply disappear.”⁵² Until the inherent equal value of all lives is recognized, said disposability of life must make human rights practitioners—or those employed in institutionalized human rights contexts—challenge fictions such as “clean war,” as opposed to accommodating or mitigating them.⁵³ Human rights communities must also denounce neoconservative conflation of human rights with national interests or western hegemony, both morally and geopolitically, within a fundamentally inequitable capitalist order.⁵⁴

Perversely, neoconservatives often coopt the language of human rights in justifying military adventurism. This is frequently accompanied by messianic presentations of ontologically-unchallenged dualities of *good* and *evil*, perhaps best embodied in the purported duty to violently export market-driven democracy abroad.⁵⁵ Human rights communities must denounce neoconservative misuse of human rights language; this misuse perpetuates injustice and generates disillusion with human rights as a concept (and for good reason). It needs to be clear that such ideology is incompatible with appropriate uses of human rights. Perhaps neoconservative appropriation may be traced to the years immediately following the *Universal Declaration of Human Rights*; as human rights were increasingly framed globally, they were also mired in racism within western centres of power, with many of the world’s peoples deemed “incapable of democratic government.”⁵⁶ Those denied autonomy are denied empathy.

Neoconservatism demonstrates its colonial underpinnings in the sanitization of violations. Anthropologist Talal Asad suggests that suffering resulting from indiscriminate bombings (justified by the aforementioned indifference to civilians) is conceived of not as a human rights abuse but rather “*collateral damage*.”⁵⁷ Abandoning language which minimizes or sanitizes suffering requires an internal rework-

ing of human rights as an idea, as well as a pairing of human rights with other frameworks such as linguistics or cultural studies. Further, human rights frameworks have largely been successful in prioritizing and protecting abuses directed at individuals, but are weaker in facing collective or communal challenges.⁵⁸ Asad highlights this paradox insofar as cases of state violence or torture against individual victims is (correctly) framed as a human rights violation.⁵⁹ The salience of human rights in individual violations as opposed to collective violations is further reflected in an effective storytelling centered around “depictions of grievous abuse, rather than on causal cogency”; flagrant, striking individual abuses are more readily opposed than slow, grinding violations.⁶⁰

Introspection is needed to understand if the contradiction highlighted by Asad is epistemologically grounded in nature, or if human rights can innovate towards expanding its scope. If the former is true, human rights communities must consider which intellectual systems complement human rights, issue by issue and violation by violation. Both the language and the approaches to injustices must be reconsidered through the lens of empathic equality.⁶¹ This necessitates reconceptualizing suffering’s proximity to the rest of global society, and a shift from privatizing the matter to making it a public concern, thus one of collective responsibility.

Though antiracist sentiments lace pieces of international human rights legislation—most notably *The International Convention on the Elimination of All Forms of Racial Discrimination*—such complementarity is incomplete, as is the basis of a mutual reinforcement between human rights and antiracism. This is largely due to a dependency on legalism. Within this context, colonialism is (correctly) condemned, but neoconservatives are able to peddle an imperial agenda (doused in amnesia) while ostensibly adhering to the dictates of human rights. Historian Brian Drohan effectively demonstrates the ways in which, based on racial fictions, colonial powers “established the legal framework within their colonies and could apply it where they saw fit.” Like their predecessors, neoconservatives are able to speak and hold the moral ground of human rights language while promoting imperial projects—most notably through the application of law towards military aims, or “lawfare.”⁶² Legalism is neither neutral nor *solely* capable of preventing relativistic uses of human rights. Nearly exclusive reliance upon legality enabled neoconservatives to reinterpret and transform the ethics of non-intervention along the lines of *exceptionalist* sensibilities; an understanding of non-intervention as the prevention of human rights norms from blocking moral and military interventionism.⁶³ Effective antiracism is inseparable from anti-imperialism, as colonial relations are fraught with human rights violations.⁶⁴ Colonialism ought to be framed intellectually, morally, and legally as a crime against humanity, while unjust neocolonial relations are understood as contributing to or perhaps constituting ongoing violations.

Returning to reconfiguring the relationship between the metropole and the colony, economic matters must be investigated. As a testing ground, the colonies were characterized by a greater segmentation of daily life that is increasingly recog-

nizable in the contemporary era, specifically in the realms of spatial security and the casualization of labour.⁶⁵ The former is reflected in the American context by the racial anxieties underpinning “white flight” from the perceived dangers or barbarism of the city to the safety or civility of the suburbs. This migration achieved not only spatial isolation, but also an inequality in terms of human rights, including access to quality education.⁶⁶

Paul Gilroy notes that employment in the colonies for local peoples was markedly insecure, largely in what we would now call the service industry.⁶⁷ The present incarnation of those patterns are fueled globally through policies of deregulation and privatization. These policies are designed to create—in the parlance of neoliberalism—flexible labour markets; this is the proverbial chickens of colonial economic designs not simply coming home to roost, but rather globalizing the roost. As a descendent of colonial economies, neoliberalism continues to foster inequality, attack the public sphere, and impede human rights—including those related to democratic participation.⁶⁸ This effect of neoliberalism is not surprising as one of its precursors, the colonial economy, was predicated on the denial of rights and humanity of the colonized.

Samuel Moyn argues that tackling inequality stemming from neoliberalism does not require replacing human rights as a guiding framework, but complementing it with something else.⁶⁹ The language of human rights fused with Adolph Reed’s notion of “infrapolitics,” or the politics of experience and daily lived resistance, would help build meaningful political communities.⁷⁰ The formality of human rights’ legalism as well as the ubiquitous nature of “infrapolitics” are both needed to fight structural inequality economically and in the workings of the supreme actor in the human rights realm: the state.

Falling Short Using a Self-Defeating Assignment of Responsibility

Human rights communities must also adjust methods of consideration in regard to state responsibility. Typically, responsibilities to protect, fulfill, and respect human rights are ascribed to a given individual’s state.⁷¹ The limit of this arrangement is that it obscures more powerful states’ and international institutions’ roles in fostering local conditions wherein human rights obligations or standards cannot be met. This is exemplified by International Monetary Fund policies facilitating direct foreign investment in dubious contexts, or most grievously by the American destabilization of Allende’s Chilean economy.⁷²

Asad demonstrates the moral perversion of the current assignment of responsibility as “the suffering that the individual sustains as a citizen—as *the national of a particular state*—is distinguished from the suffering he undergoes as *a human being*.” Clearly, Arendt was correct on the nationally-coded value of rights and the role of the state, as well as the function of citizenship in the protection of rights.⁷³ The ostensible universality of human rights’ object of protection and preservation—dignity—is addressed by and through the logic of nationalities and the in-

ternal workings of the state, as inequities between states are ignored. Meaningful understandings of responsibility are obfuscated, self-criticism by hegemons is prevented, and empathic connections beyond national borders are thwarted. This results in instances such as the failures to report on the Rwandan genocide or the competing coverage and valuation of Yemeni and Syrian suffering; leading American media only became attentive to Yemen's civil war once American "interests [were] at risk."⁷⁴ By its very nature, the current assignment of responsibility undermines a "cosmopolitan commitment to human rights" predicated in common humanity and duty to each other.⁷⁵ Accordingly, the valuation of human rights abuses is framed not as universal, but dictated by which passport—if any—the sufferer holds.⁷⁶

While it is important to continue to take states to task for local violations, human rights communities must expand liability to all actors. This deals primarily with a practical concern: (economic) hegemony should not come with invisibility of responsibility. Human rights practitioners must identify powerful actors external to the national boundaries of violation, and lobby for changes to policy. To build momentum for such efforts, it is imperative to trans-nationalize both violations and resistance. This enables an exchange of tactics, ideas, and solidarity. For instance, the recent human rights abuses alleged at Standing Rock are not insulated within the Dakotas; banks are globally invested and can successfully be pressured to divest.⁷⁷ In this case, human rights can be utilized in conjunction with a Marxist understanding of the mobility of capital to take meaningful action, fueled by an empathic impulse.

Nocuous Origins and Uses of Property Rights

Human rights actors must challenge many invocations of property rights through a renewed exploration of the origins of property rights as an idea. Property rights have been used to justify slavery, with liberty itself being conceived of as a property with the capacity to be commodified. This was largely due to a linkage between obligation and right, and a corollary capacity to comprehend punishment.⁷⁸ While this rationale has been abused, it does have some intellectual value and should be revisited in challenging "legal persons"—for instance, corporations—making human rights claims, which delegitimizes both human rights and dignity. Accordingly, legal persons lack human faculties and meaningful comprehension and personalization, as well as any comprehension of consequence and responsibility. Deprivation of human liberty has visceral, individual effects; this is not the case with socially-constructed entities.

Unlike corporations, human have emotive capacities, such as the capacity to feel empathy, motivate senses, and conceive of and act upon responsibility.⁷⁹ Lacking this competency, or the endowment of emotion, "corporate social responsibility" (CSR) is merely a tool to humanize the unhuman while skirting social accountability. Legal scholar Reuven S. Avi Yonah argues that by the logic of CSR,

attempts to avoid or minimize corporate taxation should be anathema to its proponents and counter to its application, as taxation is a foundational social responsibility.⁸⁰ Perhaps we ought to understand the poor track record of CSR less as *failures*, but rather as undertakings that are impossible or illogical, even if well-intentioned.⁸¹ Lacking the emotive capacity for free will or for responsibility which is constitutive to rights, capital requires greater oversight, accountability, and regulation, as we cannot expect it to ethically correct itself. This is not by flaw but by design.⁸²

Teleologically, corporations are meant to accumulate capital, and are incapable of developing empathy due to their amoral character; human existence cannot be reduced to this.⁸³ Property rights should be used to protect humans from dispossession, expropriation and the like; not in monopolistic efforts related to intellectual property that can be harmful to human well-being.⁸⁴

By enabling nonhuman entities to lay claims to human rights through property rights, not only are proponents of frameworks otherwise compatible with human rights alienated at an emotive or ethical level, but also at an intellectual level. By institutionalizing property rights claims, proponents of human rights have further made capitalism the inevitable *modus operandi*; through property rights claims, capitalism has its ontology stabilized. This follows hegemonic doctrines claiming the free market's seemingly organic nature. Such institutionalization is problematic, given the decreasing faith in capitalism—especially amongst millennials—creating the possibility for human rights to be conceived of as useless at best, and a tool of (rigged) capitalism at worst.⁸⁵ Accordingly, the state's provision of property rights to corporate power has allowed a cooptation of Fela Kuti's prophetic conception of human rights:

*Human rights na my property.
So therefore, you can't dash me my property.
Human rights na my property.
Dey wan dash us human rights
...
Botba na friend to Thatcher & Reagan
Botba na friend to some other leaders too
And together dem wan dash us human rights.*⁸⁶

In effect, the commodification of human rights through corporate property rights has largely dispossessed the concept of its intrinsic good, making it a tool to further rather than challenge power. Kuti's concept of human rights has perhaps been (at least is viewed as having been) coopted by the powerful it initially threatened, leading to contemporary adaptation of language on other terms such as inequity.

Accepting Lenin's conception of imperialism as an outgrowth of capitalism, the portrayal of capitalist entities possessing selfhood which is attacked by attempts to constrain accumulation is tantamount to human rights being used as

ethical dressing.⁸⁷ Again, similar to Drohan's scholarship on lawfare, the violence of another capitalist creation, the human corporation, uses the language of human rights to manipulate legal norms in order to both cloak their role in abuses as well as to preserve their power. The imbuelement of character, selfhood, and rights in transnational corporations signals the retreat of the imperial state and the rise of consolidated capitalism. Like their predecessor, the imperial state, transnational corporations are able to speak and benefit from the language of human rights while using legal, financial, and governance fictions to hide from meaningful accountability.⁸⁸ Perversely, as corporations are protected by human rights, defenders of such rights for human beings face increased risks of violent intimidation and assassination.⁸⁹

Conclusion: Operationalized Empathy, Shared Challenges and Joint Paths Forward

Many challenges remain for human rights, including its flagrant misuse, threats to saliency both from within and without, reliance on state actors, and dubious aspects in origin stories.⁹⁰ These challenges reflect many issues facing global civil society writ large: the loss of faith in institutions which is fueling reactionary populism; deep-rooted moral, institutional, and historical damage, resulting in structural exclusion; limited scopes of responsibility; and fractional conceptualizations of the person. The tasks of reevaluation, repair, and renewal are impossible for human rights communities to perform alone. Meaningful (and sometimes messy) cooperation with previously competitive, antagonistic, or even apathetic ideological communities will be necessary.⁹¹

Effective cooperation will stem from and reproduce the very basis of equality and empathy, and this requires human rights communities to recognize their guiding framework as complementary rather than necessarily superseding the models, language and ethics of others. Empathic action requires understanding and respecting that others may have alternative languages or templates towards achieving similar goals. To facilitate such cooperation, proponents of human rights ought to (re)assert empathy as a cornerstone to productive (and patient) dialogue and co-constitutive action. In complementary capacities, appropriate human rights application may continue to buffer extremist cultural relativism, insofar as empathy informs intellectual and practical limitations while collapsing creative and inventive barriers.

Operationalized empathy requires the recognition of the competencies and capacities that proponents of interlocking or complementary frameworks have to independently create, imagine, and enact. Successful collaboration necessitates empathy in order to foment the trust necessary for successful coalitions and solidarity. In this vein, proponents of human rights ought to actively listen to and engage with proponents of similar visions. Practically, this demands that institutions promoting human rights shift away from a present privately characterized by an ac-

tivist at a recent NGO Committee on the Status of Women event as *shaping local needs around thematic international aims*.

In order to receive necessary funding, civil society must force their genuine ambitions or needs, proverbially conceived of as circular pegs, into the square hole of the sponsor's agenda. Though the inequity of this relationship is problematic, in the interim, without large scale self-sustaining civil society, sponsoring organizations must reorient guiding agendas towards a paradigm governed by and for the beneficiaries. Human rights achievements and their measurement must shift from merely the technical or technocratic, towards a greater fusion with the experiential. This may serve to reinvigorate the use of human rights by social movements and other organic forms of resistance.⁹²

Conceptually, we must veer away from increasingly professionalized, often apolitical, neutral, or seemingly objective understandings and sensibilities surrounding human rights—particularly in regards to international institutions—to restore the *human* in human rights.⁹³ Human rights continue to be an excellent tool at our disposal and will only increase in value with the hard work of consistent and honest introspection. Powering the battery of human rights with honest sentiments and expressions of empathy supports meaningful and effective collaboration, delivers great reason for hope, optimism, and a renewed belief in the possible.

NOTES

¹ Peter Denton, *Gift Ecology: Reimagining A Sustainable World* (Victoria, CA: Rocky Mountain Books, 2012), 20.

² Samuel Moyn, *Human Rights and the Uses of History* (London, UK: Verso, 2014), 97.

³ “The pragmatist is not an atheist, but an agnostic.” For more on this understanding of pragmatic human rights philosophy and its defense against relativism, see Geoff Dancy, “Human Rights Pragmatism: Belief, Inquiry, and Action,” *European Journal of International Relations* 22, no. 3 (September 2015): 514–520.

⁴ Richard Raber, “We are Talking at Rather than to Each Other,” *Daily Maverick* (Johannesburg, ZA), December 2, 2016, accessed December 2, 2016, <http://www.dailymaverick.co.za/opinionista/2016-12-02-we-are-talking-at-rather-than-to-each-other>.

⁵ Lynn Hunt, *Inventing Human Rights: A History* (New York: W.W. Norton & Company, 2007), 52–53.

⁶ Ibid.

⁷ “Negation and transformation” appears in Cornel West, *Prophesy Deliverance! An Afro-American Revolutionary Christianity* (Louisville: Westminster John Knox Press, 2002), 18. I have also written about this concept in Richard Raber, “The Endurance of Race in a Postracial World: A Letter to Fanon,” *New Politics* (blog), October 26, 2015, accessed December 2, 2016, <http://newpol.org/content/endurance-race-postracial-world-letter-fanon>; Hunt, *Inventing Human*, 53.

⁸ This is increasingly recognized by institutional human rights communities, please see: “Open Society Fellowship,” Open Society Foundations, accessed December 2, 2016, <https://www.opensocietyfoundations.org/grants/open-society-fellowship>. This issue is also raised in the tension articulated by Samuel Moyn between the logics of sufficiency and equality, which are often in competition as the latter has been privileged while accommodating capitalist expansion. See Samuel Moyn, *Not Enough: Human Rights in an Unequal World* (Cambridge, MA: The Belknap Press of Harvard University Press, 2018), 3.

⁹ Jason Hannan, “Justice Implicit: The Pragmatism of Amartya Sen,” *Contemporary Pragmatism* 12, no. 2 (December 22, 2015): 320.

¹⁰ Ibid., 324–328.

¹¹ Jeremy Rifkin, *The Empathic Civilization: The Race to Global Consciousness in a World in Crisis* (New York: Penguin Group, 2009), 317.

¹² Ibid.

¹³ S. Durgalakshmi and R. Ammu, “Law as an Instrument of Social Change and for Empowerment of the Masses,” *Indian Journal of Applied Research* 5, no. 12 (December 2015): 130.

¹⁴ Moyn, *Human Rights*, 94–97.

¹⁵ Greg Grandin, *Empire’s Workshop: Latin America, the United States, and the Rise of the New Imperialism* (New York: Henry Holt and Company, 2010), 63–66.

¹⁶ The challenges with articulating such a vision will be discussed later.

¹⁷ “International Convention on the Elimination of All Forms of Racial Discrimination,” Office of the United Nations High Commissioner for Human Rights, accessed December 3, 2016, <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CERD.aspx>.

¹⁸ Paul Gilroy, *Postcolonial Melancholia* (New York: Columbia University Press, 2005), 49.

¹⁹ Richard Raber, “Rejecting Postracialism: Whiteness, Morality and Decency,” *Daily Maverick*, August 3, 2016, accessed December 3, 2016, <http://www.daily-maverick.co.za/opinionista/2016-08-03-rejecting-postracialism-whiteness-morality-and-decency/>.

²⁰ Articulated here: G.W.F. Hegel, *Hegel’s Phenomenology of Spirit*, trans. A.V. Miller,

ed. J.N Findlay (Oxford: Oxford University Press, 1979), 111–119.

²¹ Gilroy, *Postcolonial Melancholia*, 55.

²² Rifkin, *The Empathic*, 317.

²³ *Ibid.*, 320.

²⁴ Gilroy, 54.

²⁵ Narratives over-dating the origins of human rights face the risk of imposing an over-intentionality on historical actors. See Susan Longfield Karr, review of *The History of Human Rights: From Ancient Times to the Globalization Era*, by Micheline R. Ishay, *Journal of World History* 22, no. 3 (September 2011): 583–584.

²⁶ Frantz Fanon, *The Wretched of the Earth*, trans. Richard Philcox (New York: Grove Press, 2004), 57; Aimé Césaire, *Discourse on Colonialism*, trans. Joan Pinkham (New York: Monthly Review Press, 2000), 36; Raber, “The Endurance.”

²⁷ Samuel Moyn, *Human Rights and the Uses of History* (Brooklyn, NY: Verso, 2014), 173, 293–294, e-book.

²⁸ Bryan Cheyette, *Diasporas of the Mind: Jewish and Postcolonial Writing and the Nightmare of History* (New Haven: Yale University Press, 2013), 15; Matthew Frye Jacobson, *Whiteness of a Different Color: European Immigrants and the Alchemy of Race*, 2003 ed. (Cambridge, MA: Harvard University Press, 2003), 183, 188.

²⁹ Walter Bgoya, “Publishing in Africa: Culture and Development,” in *The Muse of Modernity: Essays on Culture as Development in Africa*, eds. Philip G. Altbach and Salah M. Hassan (Trenton: Africa World Press, 1996), 158.

³⁰ Fabian Klose, *Human Rights in the Shadow of Colonial Violence: The Wars of Independence in Kenya and Algeria*, trans. Dona Geyer (Philadelphia: University of Pennsylvania Press, 2013), 92, 217; Brian Drohan, *Brutality in the Age of Human Rights: Activism and Counterinsurgency at the End of the British Empire* (Ithaca: Cornell University Press, 2017), 11.

³¹ Abid Ullah Jan, *After Fascism: Muslims and the Struggle for Self-Determination* (Ottawa: Pragmatic Publishing, 2006), 19–20; Klose, *Human Rights*, 217.

³² George J. Sefa Dei, “Introduction: Mapping the Terrain—Towards a New Politics of Resistance,” in *Anti-Colonialism and Education: The Politics of Resistance*, eds. George J. Sefa Dei and Arlo Kempf (Rotterdam: Sense Publishers, 2006), 2–3.

³³ For a reading of America’s ostensible solving of racial strife and the elimination of race as a category of socially-imposed difference, see Adia Harvey Wingfield and Joe R. Feagin, *Yes We Can?: Racial Framing and the Obama Presidency*, 2nd ed. (New York: Routledge, 2013), 717–720, e-book. For examples of denialism, see Julia Hartley-Brewer, “Jamaican Reparations: British Taxpayers are not to Blame for the Horror of Slavery,” *The Telegraph*, September 29, 2015, accessed March 1, 2018, <https://www.telegraph.co.uk/news/worldnews/centralamericaandthecaribbean/jamaica/11898842/British-taxpayers-are-not-to-blame-for-the-horror->

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³⁴ Ben Singer, "Modernity, Hyperstimulus, and the Rise of Popular Sensationalism," in *Cinema and the Invention of Modern Life*, eds. Leo Charney and Vanessa R. Schwartz (Berkeley: University of California Press, 1995), 72–73.

³⁵ Uzma S. Burney, "European Court of Human Rights Upholds France's Ban on the Full-Face Veil," *American Society of International Law* (blog), February 3, 2015, accessed December 3, 2016, <https://www.asil.org/insights/volume/19/issue/3/european-court-human-rights-upholds-frances-ban-full-face-veil>.

³⁶ Ibid.

³⁷ Ibid.

³⁸ Gilroy, *Postcolonial Melancholia*, 37.

³⁹ Albert Memmi, *The Colonizer and the Colonized* (Boston: Beacon Press, 1991), 70–71.

⁴⁰ Asad Haider, "Trump and the Muslim Question," *Jacobin*, accessed December 3, 2016, <https://www.jacobinmag.com/2016/11/trump-and-the-muslim-question/>.

⁴¹ Rifkin, *The Empathic*, 317.

⁴² See Hunt, *Inventing Human*, 66–130.

⁴³ Zack Beauchamp, "What Black Panther can Teach us About International Relations," *Vox*, accessed March 8, 2018, <https://www.vox.com/culture/2018/2/27/17029730/black-panther-marvel-kill-monger-ir>; Shanon Lee, "The Women of 'Black Panther' are Empowered not Just in Politics and War, but also in Love," *The Washington Post*, February 23, 2018, accessed March 8, 2018,

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⁴⁶ Hannah Arendt, *The Origins of Totalitarianism* (Orlando: Harcourt, 1976), 299–330.

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⁴⁹ Alfred W. McCoy, "Police, Prisons, and Law Enforcement," in *Colonial Crucible: Empire in the Making of the Modern American State*, eds. Alfred W. McCoy and Francisco A. Scarano (Madison: The University of Wisconsin Press, 2009), 83–86; Alfred W. McCoy, "Surveillance Blowback: The Making of the U.S. Surveillance State 1898–2020," *Tom Dispatch* (blog), July 14, 2013, accessed December 5, 2016, <http://www.tomdispatch.com/blog/175724/>.

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⁵³ *Ibid.*, 43.

⁵⁴ Guillot, *The Democracy*, 77–80.

⁵⁵ Grandin, *Empire's Workshop*, 7, 53, 149, 152, 197, 227, 232.

⁵⁶ Roland Burke, *Decolonization and the Evolution of International Human Rights*, Pennsylvania Studies in Human Rights (Philadelphia: University of Pennsylvania Press, 2010), 146–147.

⁵⁷ Talal Asad, *Formations of the Secular: Christianity, Islam, Modernity* (Stanford: Stanford University Press, 2003), 128.

⁵⁸ Samuel Moyn, "Human Rights and the Age of Inequality," Open Democracy,

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⁶⁰ Diana Tietjens Meyers, *Victims' Stories and the Advancement of Human Rights* (New York: Oxford University Press, 2016), 104.

⁶¹ Rifkin, *The Empathic*, 317.

⁶² Drohan, *Brutality in the Age of Human*, 1–15.

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⁶⁴ Horace Campbell, “Imperialism and Anti-Imperialism in Africa,” *Monthly Review*, July 1, 2015, accessed March 8, 2018, <https://monthlyreview.org/2015/07/01/imperialism-and-anti-imperialism-in-africa/>; Lynn Huntley, “Combating Racism in the Global Era,” *The Crisis*, July 2001, 24–26.

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⁶⁸ See Moyn, “Human Rights”; David Ridley, “John Dewey’s ‘Intelligent Populism’: Beyond Brexit, Trump and Post-Truth,” Open Democracy, accessed December 8, 2016, <https://www.opendemocracy.net/david-ridley/john-dewey-s-intelligent-populism-beyond-brexit-trump-and-post-truth>; Juan Pablo Bohoslavsky, “The Vicious Spiral of Economic Inequality and Financial Crises,” Open Democracy, accessed December 4, 2016, <https://www.opendemocracy.net/openglobalrights/juan-pablo-bohoslavsky/vicious-spiral-of-economic-inequality-and-financial-crises>.

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⁷⁴ Noam Schimmel, "An Invisible Genocide: How the Western Media Failed to Report the 1994 Rwandan Genocide of the Tutsi and Why," *The International Journal of Human Rights* 15, no. 6 (October 2011): 1126–1129; Amanda Taub, "Why Some Wars (Like Syria's) Get More Attention Than Others (Like Yemen's)," *The New York Times*, October 1, 2016, accessed February 28, 2018, <https://www.nytimes.com/2016/10/02/world/why-some-wars-like-syrias-get-more-attention-than-others-like-yemens.html>.

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⁸¹ Philip E. Quigley, "A Year of Corporate Social Responsibility Failures," APICS, accessed March 14, 2018, <http://www.apics.org/apics-for-individuals/apics-magazine-home/magazine-detail-page/2017/11/15/a-year-of-corporate-social-responsibility-failures>; Enrique Dans, "Volkswagen and the Failure of Corporate Social Responsibility," *Forbes*, accessed March 14, 2018, <https://www.forbes.com/sites/enriquedans/2015/09/27/volkswagen-and-the-failure-of-corporate-social-responsibility/>.

⁸² CSR is often driven by the immediacy of securing stability or instrumentalizing targeted social or developmental deficits merely to improve corporate image; the mechanics of CSR are incompatible with meaningful social engagement. Many of these initiatives have almost comically poor results. Most importantly, CSR often neglects to address challenges raised by a corporation's own activities, or public issues which may benefit the corporation at the expense of public interest, especially in the realm of governance. See Jędrzej George Frynas, "The False

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⁸⁴ The centrality of land or property in one’s capability to pursue ends reflecting fulfillment, autonomy, and dignity is evinced in Eric Foner’s scholarship, noting that recently freed American slaves equated land with freedom. Eric Foner, *A Short History of Reconstruction, 1863–1867* (New York: Harper Perennial, 1990), 73; J. Janewa Osei-Tutu, “Corporate ‘Human Rights’ to Intellectual Property Protection?,” *Santa Clara Law Review* 55, no. 1 (July 10, 2015): 9, accessed December 6, 2016, <http://digitalcommons.law.scu.edu/cgi/viewcontent.cgi?article=2791&context=lawreview>.

⁸⁵ Sarah Kendzior, “Why Young Americans are Giving Up on Capitalism,” *Foreign Policy*, accessed February 13, 2017, <http://foreignpolicy.com/2016/06/16/why-young-americans-are-giving-up-on-capitalism/>.

⁸⁶ “Fela on Buhari—Beasts of no Nation,” *Nairaland* (blog), April 1, 2011, accessed February 13, 2017, <http://www.nairaland.com/636175/fela-buhari-beasts-no-nation>.

⁸⁷ Vladimir Ilyich Lenin, *Imperialism, the Highest Stage of Capitalism* (Moscow: Progress Publishers, 2008), 265–275, accessed March 8, 2018, <https://www.marxists.org/archive/lenin/works/1916/imp-hsc/ch07.htm>.

⁸⁸ Casey Michel, “The U.S. Is a Good Place for Bad People to Stash Their Money,” *The Atlantic*, accessed March 12, 2018, <https://www.theatlantic.com/business/archive/2017/07/us-anonymous-shell-companies/531996/>.

For the context of global financial institutions, see William K. Carroll, *The Making of a Transnational Capitalist Class: Corporate Power in the Twenty-First Century* (London: Zed Books, 2010), 232. Quantification and measurement in this area are often quite difficult—see United Nations Conference on Trade and Development,

“Transnational Corporations Statistics,” UNCTAD, accessed March 8, 2018, <http://unctad.org/en/Pages/DIAE/Transnational-Corporations-Statistics.aspx>.

⁸⁹ Amnesty International, *Deadly but Preventable: Killings and Enforced Disappearances of Those Who Defend Human Rights* (London: Amnesty International, 2017), 7; Annie Kelly, “‘Attacks and Killings’: Human Rights Activists at Growing Risk, Study Claims,” *The Guardian*, March 9, 2018, accessed March 12, 2018, <https://www.theguardian.com/global-development/2018/mar/09/human-rights-activists-growing-risk-attacks-and-killings-study-claims>.

⁹⁰ In terms of coopting human rights for neoconservative aims, see Hamid Dabashi, *Brown Skin, White Masks* (Winnipeg: Fernwood Publishing, 2011), 17, 21, 23, 36–37. For confluences with or cooptation of human rights for national interest, see Nicolas Guilhot, *The Democracy Makers: Human Rights and the Politics of Global Order* (New York: Columbia University Press, 2005), 78–80.

⁹¹ Pragmatically speaking, this requires a willingness to recognize the efficacy—or lack thereof—of initiatives and legislation. Moreover, human rights advocates must be willing to work as effective partners, rather than simply lead while mediating the plethora of ethical conflicts arising in human rights work. The latter is particularly of concern in repressive states; see Dancy, “Human Rights,” 522–525.

⁹² For an understanding of how the professionalized use of human rights has undercut organic mobilization and resistance, see Michael Allen, review of *The Democracy Makers: Human Rights and the Politics of Global Order*, by Nicolas Guilhot, *Dissent*, Summer 2005, 39–40.

⁹³ Marco Duranti, *The Conservative Human Rights Revolution: European Identity, Transnational Politics and the Origins of the European Convention* (New York: Oxford University Press, 2017), 49–51, 61, 69. We also witness the ways in which international organizations claim to abide by human rights norms, while fostering neoliberal inequity through the language of classic technocracy. For example, the World Bank, a neoliberal instrument, ostensibly promotes increased accountability of states to their citizens: Anupama Dokeniya, “Rights and Development,” *The World Bank* (blog), May 16, 2012, accessed March 12, 2018, <https://blogs.worldbank.org/publicsphere/rights-and-development>. For a working definition of technocracy, see Sylvain Lavelle, “Paradigms of Governance: From Technocracy to Democracy,” in *Human Rights and Ethics: Concepts, Methodologies, Tools and Applications*, Information Resources Management Association (Hershey, PA: Information Science Reference, 2015), 557–558.